1949

File No. Misc CR/49

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A **BRANCH**

Subject:— Miscellaneous Correspondence Relating to Criminal appeals.

[Parts I & II Combined in this File after Examination]

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C O N T E N T S.

Legal Department File No. Misc. Cr. / 49.

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No. 10/5/48 S.P.E
Government of India;
Ministry of Home Affairs.

From

U.A. Ghoshal Esqr. , I.C.S.
Deputy Secretary to the Government of India.

To

All Provincial Governments.

New Delhi, 3, the 14 July 1948.

Subject.- Appeals against acquittals in S.P.E' cases.

Sir.

According to the normal procedure followed in the provinces. the sanction of the Provincial Governments under Section 417 of the Criminal Procedure Code, to the filing of appeals against acquittals is obtained by the Police authorities through the Deputy Commissioner and Commissioner concerned and the Law Officers of the Provincial Government. In the cases investigated and prosecuted by the D.S.P.E. and its Prosecutors, the District Magistrate and the other officers referred to are not directly concerned. They are not therefore acquainted with the facts and circumstances of the cases In view of this, the Government of India are of the view that the primary responsibility for taking decision regarding filing of appeals against acquittals in D.S.P.E. cases should rest with the Inspector General, Special Police Establishment, who is assisted by his own legal advisers. He should be permitted to a preach the Provincial Governments for permission under Section 417 of Criminal Procedure Code without the intervention of the officers referred to in the beginning of this letter.

I am, therefore, to request that the Provincial Government, if they see no objection, may kindly make

necessary -..

necessary amendment in relevant provisions of their Law Department Manuals permitting the Inspector General of Police, D.S.P.E. to move the Provincial Governments direct in the matter of filing of appeals against acquittals in S.P.E. cases.

Yours faithfully,
14-7

(U.K.GHOSHAL)

Deputy Secretary to the Government of India.

MBT./ 13.7

No. 10/5-48-S.P.E. New Delhi, 3, the July 1948.

Copy forwarded to Inspector General of Police, D.S.P.E. for information

Sd/

(S.P.MANNA)

Assistant Secretary to the Government of India.

No. 9225
Legal Department.
Bombay Castle, 29th September 1948.

From

P.M.Lad, Esquire, I.C.S.'
Secretary to the Government of Bombay.
Legal Department.

To

The Deputy Secretary to the Government of India,
Ministry of Home Affairs,
New Delhi.

Subject .- Appeals against acquittals in S.P.E. cases.

Sir,

With reference to your letter No. 10/5/48 S.P.E. dated the 14th July 1948, on the subject noted above, I am directed to state that this Government is unable to agree to your proposal that the primary responsibility fortaking decision regarding filing of appeals against acquittals in S.P.E. Cases should rest with the Inspector General, Special Police Establishment. The power given to the Provincial Government by section 417 of the Criminal Procedure Code, 1898, is of an exceptional and unusual charagter. The High Courts in India have held that this power should be used sparingly and with circumspection, care and caution. It is a special weapon intended for exceptional occasions and is to be used only after most anxious consideration and in cases of great public importance or in which a principle is involved. Accordingly, the Rules made by this Government provide that proposals for appeals against acquittals should come to Government through the District Magistrates and the Law Officers. This provision is made not on the ground that these Officers possess any special knowledge of the case but on the ground that the decision to file an appeal against acquittal which is an extraordinary remedy should be taken by an independent authority which will pass the merits of the case in review.

It is for this reason provided that no appeal against acquittal shall be filed unless the law Officer (i.e. , the Government Pleader, High Court) who has to conduct it concurs in that porposal and that if the Remembrancer of Legal Affairs, differs from the Government Pleader the matter must of necessity be referred to the Advocate General. I am to add here that these Rules have been framed in consultation with and on the advice of the Government of ~~Ind~~ India in their letter, Home Department (Judicial) No. 626, dated the 1st August 1918. There is no special reason why this well established rule should be departed from in respect of appeals against acquittals in S.P.E. cases. Presumably such cases do not stand on any different footing and do not require a procedure different from other criminal cases in which the Crown proposes to file an appeal against acquittal. To constitute the prosecuting police the primary judge of the necessity or otherwise of filing an appeal would deprive an accused person of the safeguard of an independent decision on thepoint by trained Law Officers, who can be trusted to take a detached view in full realization of their responsibility in the conduct of the appeal in the High Court. The advice tendered by the legal advisers who assist the Inspector General, special Police Establishment, can never be a substitute for such independent decision. Moreover, cases may conceivably arise wherein the investigating police may be disinclined to propose an appeal against an acquittal lest it may expose the investigation to judicial criticism. In discharging its executive functions relating to the administration of justice the Provincial Government ought to be advised by its own Law Officers and not by the investigating police of the Central Government. For all these reasons, this Government is of opinion that it will be inadvisable to amend the law rules so as to eliminate the intervention of the District Magistrate or the Public ~~Prosecutor~~ Prosecutor of Bombay and its other Law Officers such

the Remembrancer of Legal Affairs and the Government Pleader in the High Court.

Yours faithfully,

O.C. P.M.Lad

S.C. 4 C. 5/6

No. 10/5/48-SPE,
GOVERNMENT OF INDIA,
MINISTRY OF HOME AFFAIRS.

From

U.K. Ghoshal, Esq, I.C.S.
Deputy Secretary to the Government of In[illegible]

To

The Secretary to the Government of Bomba
Legal Department.

New Delhi, the 27th October, 1948.

Subject.- Appeals against acquittals in S.P.E. cases.

*****

Sir,

With reference to the correspondence resting with your letter No. 9225, dated the 29th September 1948, on the above subject, I am directed to invite attention to this Ministry's letter no. 10/5/48-SPE, dated 27th October 1948 (copy enclosed) which has been issued in modification of this Ministry's letter of the same number dated the 14th July 1948 and to express the hope that this second letter will be found to meet the main contention of the Provincial Government, namely, that the safeguard of an independent decision by trained Law Officers, who can be trusted to take a detached view of the necessity or otherwise of filing an appeal, should be maintained. The Government of India have no intention of placing the accused in Special Police Establishment cases in a position where anything less than justice would be done to them. Unlike ordinary criminal cases, however, where local executive officers like the District Magistrate and the Commissioner would be concerned as being responsible for law and order and good administration in their particular areas, the Special Police Establishment cases are of a nature that do not possess any feature that the Provincial Government, with the assistance of their Law Officers, cannot take a decision on. For this reason, it seems to be unnecessary to introduce the District Magistrate and the Divisional Commissioner as additional agency for screening proposals for opinion against acquittal. The only...

object of the Government of India in suggesting this new procedure for filing appeals in Special Police Establishment cases is to minimise delay by enabling the authorities primarily concerned in the matter to establish direct contact

Yours faithfully,

Deputy Secretary to the Govt. of India.

S.C. 5/6

No. 10/5/48 - SPE.
GOVERNMENT OF INDIA.
MINISTRY OF HOME AFFAIRS

From

U.K. Ghoshal, Esqr., I.C.S.
Deputy Secretary to the Government of India.

To

All Provincial Governments.

New Delhi, the 27th October, 1948.

Subject.- Appeals against acquittals in S.P.E. cases.

Sir,

In modification of this Ministry's letter no. 10/5/48-SPE., dated the 14th July 1948, on the subject mentioned above, I am directed to say that, on reconsideration, the Government of India have decided that the procedure for filing appeals against acquittals in Special Police Establishment cases will be as follows. The Inspector-General of Police, Delhi Special Police Establishment, will forward his recommendation to the Government of India who will scrutinise it with the assistance of their law officers. The Provincial Government concerned will then be requested that an appeal may be filed, when they will have an opportunity of consulting their own legal advisors if they consider it necessary to do so before filing the appeal. Such consultation will however have to be done expeditiously to prevent the appeal from being time-barred and in order to assist the Provincial Government in ensuring this the date on which the time limit for filing an appeal expires will be mentioned in each such reference. The appeals will be argued by the legal advisors of the Delhi Special Police Establishment. The Provincial Advocate-General would formally nominate the lawyer appointed by the Inspector-General, Special Police Establishment, or the Ministry of Home Affairs to represent him for arguments. For the above purpose, he could keep the Inspector-General informed of

the date or dates fixed in the appeal.

2. I am to request that the concurrence of the Provincial Government in this procedure may be conveyed to the Government of India at an early date.

3. This desposes of the East Pubjab Government(s letter no. 5673-JJ-48/40088, dated the 26th July , 1948.

Yours faithfully.

Sd/ 7-10

Deputy Secretary to the Govt. of India.

No. 2708
Legal Department.
Bombay Castle, March 1949.

From

P.M.Lad, Esquire, I.C.S.
Secretary to the Government of Bombay.
Legal Department. Bombay.

To

The Deputy Secretary to the Government of India.
Ministry of Home Affairs.
New Delhi

Subject.- Appeals against acquittals in S.P.E. cases.

Sir,

With reference to the correspondence ending with your letter No. 10/5/48-S.E, dated the 27th October 1948 on the subject mentioned above, I am directed to state that the question was discussed with the D.S.P. Special Police Establishment, Government of India, at Bombay (Mr. K.S.Sase) and the Prosecuting Inspector (Mr. D.K. Gosevi) and it was agreed that the procedure now suggested in your letter would prove not only inconvenient but very dilatory indeed. In that connection I am to enclose for your information a recent circular issued by this Government for ensuring that cases of appeals against acquittals are expeditiously brought to the notice of Government with a view to taking action. There is no distinction between the anti-corruption and other cases investigated and brought to trial by the Special Police Establishment of the Government of India and similar cases dealth with by the police establishment of this Government. On the other hand, there being only one Prosecuting Inspector of the Government of India in charge of such cases, it should be ~~xxxidm~~ easier for him, in terms of the circular quoted above, to approach this Government with the utmost expedition for an appeal

against acquittal. To require, as suggested in your letter, that the Prosecuting Inspector should send the cases (apparently through the D.S.P.) to the Inspector General of Police, Delhi Special Police Establishment, who will forward his recommendation to the Government of India, who will scrutinise it with the assistance of their legal advisers and then to invite the Provincial Government again to consult their Legal advisers if necessary would obviously be a very dilatory and altogether unnecessary procedure. There is reason to apprehend that by adopting this procedure it would be impossible to keep within thetime table of administrative sanction within three months and of filing the appeal within six months. Moreover, it need not be emphasised that the responsibility of filing the appeal must be taken by the Provincial Government who alone can figure as the appellant in the High Court under section 417 of the Code of Criminal Procedure and that, therefore, there should ordinarily be no necessity for the intermediate scrutiny by the Inspector General of Police, S.P.E. Delhi, andby the Law Officers of the Government of India.

It would also not be possible to get the appeals argued by the legal advisers of the Delhi Special Police Establishment upon the formal nomination of a lawyer by the Advocate General. Appeals are heard on the Appellate Side and it is the privilege of the Government Pleader to conduct them. It would not be feasible for this Government to appoint special lawyers even upon the nomination of the Government Pleader for conducting this particular class of appeals. The Government Pleader would find it difficult to keep the Inspector General informed of the date or dates fixed for the appeals since Boards of Appeals in the High Court are prepared at short notice.

I am to add that in important cases the D.S.P. (Special Police Establishment) may move this Government to engage the Advocate General, and if necessary, arrangements will then be made as in local cases for the Advocate General to appear and to be instructed by the Government Pleader.

In these circumstances and since the D.S.P. Special S.C.

Police Establishment, and the Prosecuting Inspector are themselves agreeable, I am to suggest that the procedure outlined in the accompanying circular should be made applicable to appeals against acquittals in C.P.E. cases also.

Yours faithfully,

P.M.Lal

Secretary to Government.

/S.C. 5/6

No. 10/5/48-SPE.
Government of India.
Ministry of Home Affairs.

From

U.K.Ghoshal, Esquire, I.C.S.
Deputy Secretary to the Govt. of India.

To

The Secretary to the Govt. of Bombay
Legal Department.

New Delhi, the 19th April , 1949

Sir,

With reference to your letter no. 2708, dated the 9th March, 1949, I am directed to observe as follows. The Government of India are entirely at one with the Provincial Government in holding the view that action in the case of acquittals in Police cases has to be considered from two points of view. The first is that all such cases should be brought under immediate review for ascertaining whether, the police failed to exercise sufficien descretion in putting the case in Court, or, in the alternative, whether the case failed due to any shortcoming in the conduct of the prosecution; this may be described as the administrative aspect. The second aspect, which may be considered as that of justice and easily, is whether there has been any failure of justice of a nature that requires the filing of an appeal against an acquittal, and also what the chances are of securing a reversa of the lower Court's order.

2. Every case of acquittal has thus to be examined both from an administrative as well as a legal aspect, and the questio at issue is what would be the most appropriate machinery for this examination in Special Police Establishment cases. The Governmen of India feel that a distinction may be drawn between ordinary Police cases and Special Police Establishment cases. ~~The Govern-~~ So far as the first group is concerned, it is unquestionable that the District Magistrate must be brought into the picture at the earliest possible stage since he is responsible for law and order within his area. For the same reason the District Public Prosecutor has also to be brought in so as to give the District

Magistrate the benefit of his technical advice. Government are of the opinion that the relationship that subsists between the District magistrate on the one hand and the Public Prosecutor and the Police on the other within a District cannot be said to exist between the District Officer and the Special Police Establishment. This is the factual position and Government of India are sure that Provincial Government are fully aware of it. The staff for both investigation and prosecution has been specially set up by the Government of India for Special Police Establishment cases and neither the District Magistrate nor his Public Prosecutor nor the District Police are answerable for what the Special Police Establishment does or fails to do. It is felt that, such being the case, the interposition of the District authorities at the stage where an appeal against an acquittal is under consideration is likely to lead to administrative difficulties. The Government of India hope that the Provincial Government will agree that in the interests of departmental discipline it is most essential that subordinate ranks must have a clear conception of the chain of responsibility that links them to higher authorities. From this point of view it would appear desirable that both the Administrative as well as the legal scrutiny should be conducted by the authorities administratively directly above the Police and prosecution staff concerned. The Government of India would, therefore, suggest the following procedure for dealing with acquittals in Special Police Establishment cases. The Special Police Establishment Prosecutor shall, within 7 days of receipt of certified copy of the judgment submit it together with a note to the Superintendent of Police who will forward it with his comments to the Inspector-General, Special Police Establishment within a further period of 7 days. The Inspector General will send the papers with his comments and the opinion of his Legal Adviser to the Home Ministry within 15 days of receipt. The Home Ministry in its turn will examine the case from the administrative aspect and also have an independent legal scrutiny carried out by the Ministry of Law if necessary before

despatching the papers to the Provincial Government where they are of the opinion that an appeal should be filed. The Provincial Government will take the final decision, on the basis of such xx x further legal opinion as they consider necessary, whether or not a appeal should be lodged, and will communicate their decision to Ministry of Home Affairs, In principle this does not differ fundamentally from the procedure laid down by the Government of Bombay for their own Police cases. The following table sets out the parallelism between the two procedures.-

Provl. cases.	S.P.E. cases.
(a) Police Prosecutor	SPE Prosecutor
(b) S.P.	S.P.
(c) I.G.	I.G.
(d) D.M.	Ministry of Home Affairs.
(e) P.P.	Ministry of Law.

The Government of India feel that since the cases are registered, investigated and prosecuted by their staff and since the responsibility for the decision to prosecute is theirs they should have an opportunity of scrutinising all cases of acquitt whether or not the Provincial Govt. is ultimately addressed for the filing of an appeal. This would enable them to keep in clos touch with the work of the Special Police Establishment so as to ensure that the staff specially constituted by them functions as it ought to the procedure outlined Mabove shouldnot result in any greater delay than that allowed for under the procedure laid dow by the Government of Bombay and the Government of India hope that in view of the considerations explained above the Provincial Government will accept the suggesion.

3. In regard to legal representation in cases of appeal agai acquittal Govt. of India accept the suggesion made by the Provl. Government.

4. It is requested that the views of the Provl. Govt. on the

suggestion made in this letter may be communicated at a very early
do e.

Yours faithfully,

(U.K.Ghoshal)

Deputy Secretary to the Government of
India.

S.C. 5/6

No. 5141.
Legal Department.
Bombay Castle, 10th May 1949.

From

P.N.Lad, Esquire, I.C.S.

Secretary to the Government of Bombay.
Legal Department, Bombay.

To

The Deputy Secretary to the Government of India.
Ministry of Home Affairs.

Subject.- Appeals against acquittals in G.P .E. cases.

Sir,

With reference to your letter No. 10/5/48-SPE, dated the 19th April 1949 on the above subject, I am directed to inform you that the Government of Bombay agree to adopt the procedure suggested in para 2 of your letter under reference, It is hoped, however that the S.P.E. officers will strictly adhere to the proposed time-table so that the Provincial Government may have sufficient time to consider the merits of the case. They may also be directed to forward all relevant documents including certified copies of judgments along with the papers of each case.

Yours faithfully,

P.N.Lad
10-5

Secretary to Government.

S.C. 5/6

GOVERNMENT OF BOMBAY.

Legal Department.

Circular No. 1710

Bombay Castle, 14th February 1949.

C I R C U L A R.

Under Rule 50 of the Law Officers' Rules proposals for filing appeals against acquittals and revision applications for enhancement of sentences are to be made to Government within a period of two months from the date of the judgment. However, it is very often noticed, that proposals are received in this office not only after the period prescribed in this Rule but sometimes also after the period of limitation. The proposals are, moreover, in many cases not accompanied with certified copies of the judgment and extracts from relevant evidence, and much time is wasted in calling for these papers resulting in delay and consequent failure of the case in the High Court on account of delay.

With a view to eliminating delays and to enabling this Department to take proper steps within the time prescribed in the Law Officers' Rules it has been decided to lay down the following procedure for the guidance of the Police Prosecutors, Public Prosecutors and the District Magistrates and all other Officers of Government who may desire to move Government in matters of appeals against acquittals and revision applications :-

(1) As soon as a judgment is pronounced by the Magistrate acquittin the accused, the Police Prosecutor conducting the case should apply for a certified copy of the judgment and within seven days of receipt of the certified copy he should forward it together with a report containin his opinion and extracts from relevant evidence to the Public Prosecutor of the District. The Police Prosecutor should also endorse a copy of his report to the District Superintendent of Police who may, if he so desires, communicate his views in the matter to the District Magistrate and shall also send a copy of his report to the Inspector General of Police, Bombay Province or to the Deputy Inspector General of Police C.I.D. , Poona.

(2) On receipt of the Police Prosecutor's report and the certified copy of the judgment, the Public Prosecutor should examine the proposal and within 7 days of receipt thereof should make a report to the District Magistrate and forward the certified copy and a copy of his report to the Legal Department direct.

(3) In cases where the Public Prosecutor himself conducts the case he should apply for the certified copy of the judgment and, within seven days from receipt thereof, make a report to the District Magistra forwarding at the same time the certified copy of the judgment and a copy of his report to Legal Department direct.

(4) The District Magistrate on receipt of the report of the Public Prosecutor should examine the case and within 15 days of the receipt of the papers submit the proposal to Government in Legal Department. He should also endorse a copy of his report to the Inspector General of Police, Bombay Province, or the Deputy Inspector General of Police, C.I.D. Poona, for his information.

(5) The Inspector General of Police or the Deputy Inspector General of Police, C.I.D. may, if necessary, communicate his views on the proposal direct to the Legal Department.

(6) The procedure prescribed in (1) above should be followed in the Greater Bombay with this modification that the Police Prosecutor should endorse a copy of his report to the Commissioner of Police, Bombay, who would forward his own report to the Public Prosecutor for Bombay. The Public Prosecutor should, on receipt of the Commissioner of Police's report, follow the procedure prescribed in Rule 18 of the Law Officers' Rules.

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6.

(7) The procedure prescribed above for appeals shall also apply to proposals for revision applications for enhancement of sentence.

(8) Relevant extracts from the evidence should always be forwarded along with the judgment and the report. If any relevant exhibits are in the regional language they should be got translated into English by the Police Prosecutor or the Public Prosecutor concerned with the help of his own establishment.

By order of the Governor of Bombay.

P.M.Lad.

Secretary to Government.

To

All Departments of the Secretariat (except the Separate Department and etc.

No. of 1949.

Copy forwarded for information and guidance to

Issued
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GOVERNMENT OF BOMBAY.
Legal Department.
Circular No. 5387.
Bombaay Castle, 26th May 1949.

Government have noticed that there is a misconception among some Law Officers that the procedure laid down in Legal Department, Circular No. 1710, dated the 14th February 1949 is intended to apply to every case of Acquittal, Revision Application etc. decided in the Lower Courts.

Attention of the Law Officers is therefore drawn to the following lines appearing in paragraph 2 of the Circular.

"It has been decided to lay down the following procedure for the guidance of the Police Prosecutors, Public Prosecutors and the District Magistrates and all other officers of Government who may desire to move Government in matters of appeals against acquittals and revision applications.

and they are informed that the procedure laid down in the Circular is applicable only to the cases that fall within the ambit of this paragraph.

By order of the Governor of Bombay.

P.M.Lad.
Secretary to Government.

To
All Departments of the Secretariat (except the Separate Department.)
The Inspector General of Police, Bombay Province, Poo...
All Additional District Magistrates. Poona.
The Commissioner of Police, Bombay.
The Deputy Inspector General of Police, C.I.D. , Poona.
All District Magistrates.
All District Superintendents of Police,
All Public Prosecutors.

With a request to issue necessary Instructions to Police Prosecutors under them.

S.C. 5/6

Proof of sanction to prosecute
Methods of ---

GOVERNMENT OF BOMBAY.
Legal Department.
Circular No. 7300.
Bombay Castle, 3rd August 1948.

CIRCULAR.

It has been brought to the notice of Government that in Imperator vs. Abdul Rahiman Abdul Samad and another when the trial judge called upon the prosecution to prove whether sanction to launch prosecution against the accused was obtained from the Central Government as required by section 7(3) of Ordinance No. III of 1946, the prosecution merely produced a paper purporting to be the sanction to prosecute without making any attempt to prove the sanction order with the result that the prosecution failed. It appears therefore necessary to bring it to the notice of all Law Officers that in such cases the accepted method of proof of sanction is for the investigating officer to depose that he approached the authorities concerned to give sanction and that the sanction he produced was the sanction he received from the appropriate sanctioning authority and that he believed that the sanction was under the signature of the person whose signature it purported to be.

By order of the Governor of Bombay.

Sd/ F.T.K.
Assistant Remembrancer of Legal Affairs

To
The Finance Department.
All Public Prosecutors

S.C. 5/6

Sanction to prosecute.

GOVERNMENT OF BOMBAY.

Legal Department.

Circular No. 12511.

Bombay Castle, 31st December 1948.

C I R C U L A R.

Various enactments contain a provision that no prosecution shall be instituted without the previous sanction of a particular authority. These enactments do not prescribe a particular form of the sanction and it is noticed that the sanction usually takes the form which merely says that "sanction is given for a breach of a particular provision by a particular person". Such sanction is defective inasmuch as it does not show on its face with reference to what facts the sanction is given. To establish the identity of facts with reference to which the sanction is given and the facts on which the actual prosecution is launched, it thus becomes necessary for the prosecution to lead extraneous evidence, and for various reasons it is not always possible to adduce such evidence. To avoid the necessity of leading extraneous evidence, the Remembrancer of Legal Affairs has been repeatedly advising that the sanction order should contain a statement of facts with reference to which sanction is given. It has, however, been noticed that this advice is not being followed with the result that prosecutions fail for want of proper sanction. This view of the Remembrancer of Legal Affairs has been recently endorsed by the Privy Council in the case of Gokulchand Morarka vs. The King, wherein Sir John Beaumont has observed that "it is plainly desirable that the facts should be referred on the ex face of the sanction". All Departments of Government and all officers of Government who may be called upon to give sanction are, therefore, advised that while giving sanction they should invariably embody in the sanction order a st statement of the facts to ensure that the prosecution should not fail on the technical ground of the sanction being defective.

By order of the Governor of Bomba

P.M.Lad

Secretary to Government.

G.C.No. 12511, L.D., dated 31st December 1948.

To

All Departments of the Secretariat (except the Separate Department) with a request to forward copies to all officers under them.

and etc.

16/3/49.

No. of 1948.

Copy forwarded for information and guidance to.

S.C. 14/6